



EXHIBIT 15
DATE 3/27/2013
SB 629

ABOUT THE FLATHEAD WATER COMPACT

The Flathead Water Compact currently before the Montana State Legislature is a negotiated settlement of the Confederated Salish and Kootenai Tribes' (CSKT) water rights.

It results from 12 years of the U.S., the CSKT and the state of Montana working together. On February 26 the compact was approved by an overwhelming majority of the Montana Water Right Compact Commission members.

The CSKT's water rights are from "time immemorial." These rights are affirmed in the Hellgate Treaty of 1855, and upheld in numerous federal court rulings.

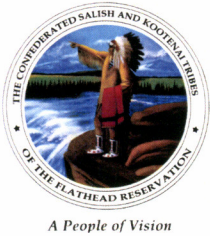
The Flathead Water Compact settles CSKT's water rights by:

- Quantifying in-stream flow in surface waters on the reservation and throughout Northwestern Montana
- Supporting wildlife species by protecting in-stream flow
- Providing for the local administration of CSKT's water rights

CSKT has made significant concessions to achieve this compact, including ensuring that farming would continue on the reservation by protecting reservation irrigators' water use rights.

In the last 34 years every other community and reservation in Montana has completed a compact under the Montana Reserved Water Rights Compact Commission. It's time the CSKT be allowed to do the same.





ABOUT THE FLATHEAD WATER USE AGREEMENT



The Flathead Water Use Agreement protects the water use rights of farmers and irrigators, while setting out a plan for future development on the Flathead Reservation. The agreement is the last piece of the larger Flathead Water Compact that settles the water rights of the Confederated Salish and Kootenai Tribes.

WHY SUPPORT THE WATER USE AGREEMENT?

The Flathead irrigation system is 104 years old and is in need of major repairs to keep the water flowing. A “yes” vote for the agreement would:

- Protect the water use rights of farmers, increasing the allocation for some while allowing efficient farms to apply for more
- Maintain local management so we can continue to make our own decisions
- Save farm families money by avoiding costly litigation
- Protect irrigators’ water use rights and provide money for repairing our broken irrigation system

WHAT HAPPENS IF THE WATER USE AGREEMENT IS REJECTED?

The agreement is the best solution for all stakeholders, providing many benefits for everyone involved. Without the agreement:

- The irrigation system will continue in disrepair
- Costs for water and energy will be higher
- State and federal funds to rehabilitate the system will not be available
- Farms and irrigators on the Flathead Reservation will have uncertain water rights
- A legal battle will ensue, where the Confederated Salish and Kootenai Tribes will seek higher in-stream flows based on their senior water rights
- Water users will have to defend their claims at their own cost





WHAT PEOPLE ARE SAYING

“And many of you may be thinking, geez, let’s just do it the way we’ve been doing it. You can’t do that. That won’t happen. And in fact it’s my belief, based on information that I have, that if we reject an agreement change will come sooner rather than later. So, change is going to come. Do you want to manage it? Or do you want to litigate it?”

ATTORNEY JOHN METROPOULOS

“The Flathead Joint Board of Control’s concern has been to protect all irrigators, and we now think that the agreement does not only that, but will provide numerous benefits to our entire community.”

WALT SCHOCK, FLATHEAD JOINT BOARD OF CONTROL CHAIRMAN

“The Tribe has a first water right. They have the 1855 priority dates on their water. So, I feel like if we go to the litigation process, it’ll impact our project, our water project – it’ll be devastating.”

SUSAN LAKE, LAKE FARMS

“Mountain Water Company supports the proposed Compact for a number of reasons, including: The compact will avoid inevitable and protracted federal litigation over the Confederated Salish and Kootenai Tribes’ water rights.”

JOHN KAPPES, PRESIDENT, MOUNTAIN WATER COMPANY

“As you may also know, some people have very strong opinions about the agreement. No surprises there. It deals with our water and our future. It crosses physical and political boundaries. It spans nearly 160 years of law, and thousands of years of tradition. It tries to balance ever-increasing human demands with the ongoing needs of fish and wildlife. And not insignificantly, it straddles what can be very deep cultural divides.”

KAREN KNUDSEN, CLARK FORK COALITION

“The hunting and fishing issue was hotter than this. People said we would not be able to fish on the reservation. That didn’t happen. Through the negotiation process the resource and the people have benefitted. That was good for business and good for the social fabric of the reservation. We can solve this issue locally.”

RIC SMITH, POLSON REAL ESTATE AGENT





INDIAN WATER LAW CONFEDERATED SALISH AND KOOTENAI TRIBES

Treaties: The supreme law of the land, subject to the power of Congress and federal courts

Marshall Trilogy (1830s): Indian Nations are semi-dependent domestic nations. US is trustee

Hellgate Treaty (July 16, 1855): Rights on a nd off the Reservation. Tribes retain exclusive right to take fish in all streams running through and bordering reservation

Winters v US (1908): US impliedly reserved water to satisfy the purposes of Indian reservations

McCarran Amendment (1952): Federal government water rights subject to state court jurisdiction. Case law finds McCarran may subject Indian rights to state court.

Colville Confederated Tribes v Walton (1982): Water rights on allotments

Nevada v US (1893): The U.S., as a trustee, can quantify Indian water rights without tribal consent.

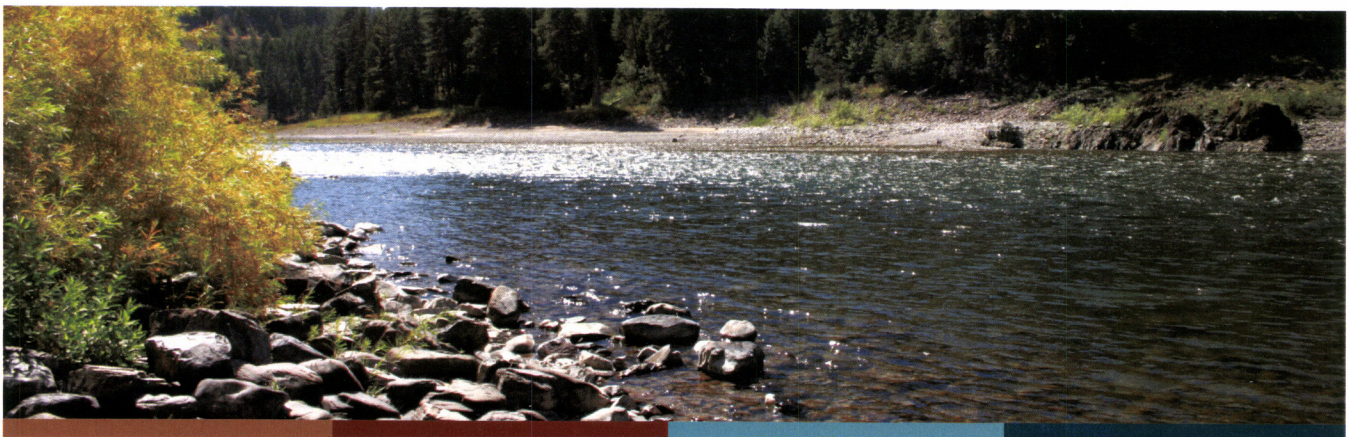
United States v Anderson (1984): Water rights on homesteads.

Montana Water Use Act: A McCarran general water rights adjudication under state law; claims and permits; Ciotti litigations.

State ex rel Greely v Confederated Salish and Kootenai Tribes (1985): Water Use Act adequate on its face; did not rule on question of whether the act is "adequate as applied."

JBC v U.S. and Salish and Kootenai Tribes (1986): Tribes have a right to protect aboriginal rights for pretreaty purposes. US as a trustee must protect treaty fishery.

INDIAN TRIBES HAVE UNIQUE
PROPERTY AND SOVEREIGNTY
RIGHTS IN THE WATER ON AND
OFF THEIR RESERVATIONS.





United States Department of the Interior

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February 19, 2013

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Confederated Salish & Kootenai Tribes of the Flathead Nation
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Dear Sirs:

As you know, for the past four years, Federal, State, Tribal and local officials have been actively negotiating to resolve all of the water right claims of the Confederated Salish & Kootenai Tribes of the Flathead Reservation that will be litigated in the Montana general stream adjudication. The negotiators have completed drafts of all of the key settlement documents and are discussing them with their respective decision makers and the public.

I wish to express my appreciation for the effective and respectful manner that each party has exhibited during the course of the negotiations. I recently had the opportunity to brief Department of the Interior officials about this negotiation, and I highlighted the productive engagement of all parties and the high quality of our drafted documents. In those briefings, I was also able to begin the effort within the Department for principals' review of the proposed agreements. As I have previously noted, the Department and this Administration have stated their continued commitment to seek to resolve tribal water right claims through settlement.

I also appreciate the parties' recognition of the need to continue to make progress in these negotiations, and I wish to reinforce this message. From the federal perspective, a failure or significant extension of the negotiations would leave unresolved several critical water resource

FEBRUARY 26, 2013 | GUEST COLUMN BY JACK AND SUSAN LAKE

COURT BATTLE OVER FLATHEAD WATER WOULD HURT EVERYONE

We come from a long history of farmers and ranchers who have relied on the Flathead Indian Irrigation Project. The Lake family has been farming in the Mission Valley since 1934. Today Lake Farms Inc. raises potatoes, grains, hay and cows on around 1,000 acres.

We still rely on the 104-year-old irrigation project, which is why we feel we must speak out in favor of the water use agreement the Flathead Reservation irrigators will vote on in the coming weeks.

As a high-water-use irrigation farmer, we have always favored the idea of a negotiated irrigation water use agreement between the Confederated Salish and Kootenai Tribes and the irrigator's Flathead Joint Board of Control. Early on in the negotiation process, we were uncomfortable that our farm wouldn't get the water that we needed. We, along with many other irrigators, submitted comments with our concerns. Negotiations continued.

The tribes came to the table with a plan to allow irrigators to apply for more water. This proposal from the tribes affirmed that they were sincerely trying to make a negotiated settlement with reservation farmers and avoid a litigated one with its astronomical costs and uncertain outcomes.

When we irrigate our fields we irrigate efficiently. We check the weather conditions, the soil conditions and fertility conditions against scientific studies about how much water and nutrients we need to grow our crop. Knowing the condition of our farm is essential to surviving as a farmer. We try very hard to control outcomes.

What are the conditions that we as irrigators should know before going to court against the Salish and Kootenai Tribes on water rights? There is a long history of losing court cases against the tribes' senior water rights. What will property values be as litigation plays out in court? What will the end result be to an irrigation system already in decline? Will our irrigation costs double and triple as we are forced to fight for water?

Even if at the end of a court battle the tribes don't get 100 percent of what they want, we are certain that irrigators will get even less.

That is why we are urging farmers on the Flathead Reservation to vote for the water use agreement.

To us, as important as the water is, also of importance is the negative impact that a protracted court battle would have with relationships across the reservation.

The tensions would set the irrigators who voted yes against those who voted no, would pit the non-tribal families against the tribal families, the businesses that supported against the ones that didn't. Anger impacts children. As one of us is a former Ronan School Board member, we know that this kind of issue inevitably finds its way to the schoolroom and the playground.

We don't want to sacrifice any more friendships to an unnecessary fight over a water use agreement that tries to be fair to everyone.

We believe that if we can hold civil discourse about our concerns, we can find solutions together.

That is what the Water Use Compact among the Confederated Salish and Kootenai Tribes, the United States and the state of Montana is about. That is what our negotiated Flathead Indian Irrigation Project Water Use Agreement is about and that is what our vote is about: It is a shared solution that creates a bright outlook for all residents of the Flathead Indian Reservation.

A no vote is a vote for years of litigation and uncertainty. A yes vote moves the process forward and protects our right to irrigation water and all other water uses important to the residents of the Flathead Indian Reservation now and in the future.

Jack and Susan Lake own Lake Farms Inc. near Ronan.

MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION

Bill Schultz, Staff Director
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Working to "conclude compacts for the equitable division and apportionment of waters between the State and its people and the several Indian Tribes claiming reserved water rights within the state," and "between the State and its people and the federal government claiming non-Indian reserved waters within the state" (85-2-701, 703)

- **Montana's Reserved Water Rights Compact Commission (RWRCC)** was established by the Montana Legislature in 1979 as part of the state-wide general stream adjudication process (85-2-701, MCA). The RWRCC is attached to the Department of Natural Resources & Conservation for administrative purposes. The Commission is scheduled to sunset on July 1, 2013.
- **The RWRCC is composed of nine members.** Four members are appointed by the Governor, one member is appointed by the Attorney General, two members are appointed by the President of the Senate and two members are appointed by the Speaker of the House of Representatives. A professional and technical staff of five supports the RWRCC including the staff director, one attorney, an agricultural engineer, one hydrologist, and a GIS specialist. The staff is scheduled to transfer to the DNRC to conduct compact implementation tasks upon sunset of the Commission.
- **The RWRCC is authorized to negotiate settlements** with federal agencies and Indian tribes that claim federal reserved water rights within the State. A federal reserved water right is a right to use water that is implied from an act of Congress, a treaty, or an executive order establishing a tribal or federal reservation. The amount of water to which a reservation is entitled depends on the purpose for which the land was reserved. In Montana, reserved water rights have been claimed for seven Indian reservations, for allotments for the Turtle Mountain Chippewa Tribe, for national parks, forests, and wildlife refuges, and for federally designated wild and scenic rivers.
- **The claims of the tribes and the federal agencies are suspended from adjudication** in the Montana Water Court while they are being negotiated by the RWRCC (85-2-217 MCA). Settlements negotiated by the RWRCC on behalf of the State are ratified by the Montana Legislature and the Tribes and approved by the appropriate federal authorities. In some instances, approval by the U.S. Departments of Justice and the Interior will be sufficient. In other cases, where federal authorization or federal appropriations are needed to implement provisions of the settlement, Congressional approval will be required.
- **Citizen participation** is an essential element of each negotiation and insures that the RWRCC's deliberations on behalf of the State address the concerns of the public and incorporate local solutions to water use problems. The negotiations are open to the public and additional public meetings are held during initial stages of negotiations and again when negotiations are nearing completion. Public comment may be submitted during the legislative phase and finally, objections may be made to the Montana Water Court prior to the incorporation of a compact into a basin decree.

COMPLETED COMPACTS

(Dates of passage and approval by Montana Legislature)

Fort Peck Tribe – Assiniboiné and Sioux
May 1985, 85-20-201, MCA

Northern Cheyenne Tribe
September 1992, 85-20-301, MCA
Congress: P.L. 102-374 (1992)

U.S. Department of the Interior, National Park Service
Jan. 1994, 85-20-401, MCA
Yellowstone National Park
Glacier National Park
May 1995
Little Bighorn Battlefield National Monument
Big Hole National Battlefield
Bighorn Canyon National Recreation Area

U.S. Department of the Interior, Bureau of Land Management
September 1997, 85-20-501, MCA
Upper Missouri National Wild and Scenic River
Bear Trap Canyon Public Recreation Site

Rocky Boy's Reservation – Chippewa Cree Tribe
April 1997, 85-20-601, MCA
November 1999, Congress: P.L. 106-163

U.S. Department of the Interior, Fish and Wildlife Service
July 1997, 85-20-701, MCA
Black Coulee National Wildlife Refuge
Benton Lake National Wildlife Refuge
April 1999, 85-20-801, MCA
Red Rock Lakes National Wildlife Refuge
March 2007, 85-20-1301, MCA
Bowdoin National Wildlife Refuge
April 2009, 85-20-1601
National Bison Range

Crow Tribe
June 1999, 85-20-901, MCA Special Legislative Session
Congress: Claims Resolution Act of 2010

Fort Belknap - Gros Ventre and Assiniboiné
April 2001, 85-20-1001, MCA

U.S. Department of Agriculture, Agriculture Research Service
March 2007, 85-20-1101, MCA
Fort Keogh Livestock and Range Research Laboratory
March 2007, 85-20-1201, MCA
Sheep Experiment Station

U.S. Department of Agriculture, Forest Service
April 2007, 85-20-1401, MCA

Blackfeet Tribe
2009, 85-20-1501, MCA

COMMISSIONERS

(Four-year terms)

Chris Tweeten, Chairman
Attorney General's Office appointee 2011

Richard Kim
Governor's appointee 2011

Gene Etchart
Governor's appointee 2011

Dorothy Bradley
Governor's appointee 2011

Mark DeBruycker
Governor's appointee 2011

Representative Kathleen Williams
House Speaker appointee 2012

Representative Daniel Salomon
House Speaker Appointee 2011

Senator Debby Barrett
Senate President Appointee 2011

Senator Dick Barrett
Senate President Appointee 2012

SUMMARY - IMPLEMENT NEGOTIATED WATER COMPACTS WITH MONTANA TRIBAL GOVERNMENTS;**CSKT – MONTANA WATER RIGHTS COMPACT**

- The CSKT –Montana Compact consists of two main components: the Compact, and the Unitary Management Ordinance. The Compact quantifies the Tribes right and sets forth the conditions on their use; the Ordinance fills the existing on-Reservation regulatory void and provides a joint State-Tribal body to administer all water rights on the Reservation. A third document, the Flathead Indian Irrigation Project (FIIP) Water Use Agreement (WUA) addresses the use of the water rights for the FIIP (*not* private rights held by irrigators personally) and CSKT instream flow rights for streams also supplying the FIIP. The WUA is a separate agreement among the FIIP, the Tribes, and the United States. It does not require legislative approval. However, the Compact cannot be fully administered without a WUA. Aspects of an earlier draft of the WUA are presently being litigated. This bill is made subject to approval of the WUA by the FJBC with a contingent effectiveness clause.
- This document summarizes the Compact. The Compact:
- Completely protects all current water users of non-irrigation rights in all water basins on- and off-reservation from the Tribes' exercise of their senior water rights.
- Will protect on-reservation irrigators within the FIIP through the WUA. See attached summary of the WUA.
- Protects non-project on-reservation irrigators in one of two ways: 1) by providing protection from call for an amount of water use similar to that provided for FIIP irrigators; or 2) through specific limitations on the enforceable levels of tribal instream flow rights to ensure protection of irrigation rights decreed in the Adjudication. The applicable mechanism depends on the geographical location of the water rights protected.
- Establishes a Unitary Management Ordinance to govern the administration and enforcement of all water rights within the boundaries of the Flathead Reservation. See attached summary of Ordinance.
- Provides water for the Tribes for existing and future tribal water needs, both consumptive and instream flow, to settle for all time the Tribes' claims to reserved water rights.
- Provides for an allocation of water from the Flathead River, including 90,000 acre-feet of water stored in Hungry Horse Reservoir, for the Tribes to use or lease within the State of Montana, of which 11,000 acre-feet must be made available for lease for off-reservation mitigation of new or existing uses.
- Provides a process for the Tribes to lease portions of their water rights within the State of Montana.
- Does not change any off-reservation jurisdictional arrangement (e.g, for quantification or issuance of water rights, water quality, species management) – which remain as they presently are under state law.
- Settles off-reservation instream flow rights for the Tribes, to which they have strong legal claims as a result of particular language in the 1855 Hellgate Treaty (the right to "take fish" in the Tribes' "usual and accustomed" locations). Federal case law interprets this treaty language to include water rights outside the reservation to maintain fisheries flows.
- CSKT are the only tribes in Montana with treaty language supporting off-reservation instream flow water rights. This settlement is not a precedent for other Montana tribes to seek to reopen their settlements to assert off-reservation water rights claims. There is specific language in this settlement on this point.
- Secures, in exchange for the rights and benefits recognized by the Compact, the waiver and relinquishment of all other reserved water rights claims the Tribes could otherwise make in Montana, including the vast majority of their potential off-reservation claims both west and east of the Continental Divide.

CSKT WATER RIGHTS-ON RESERVATION

- On-reservation instream flow rights recognized at specific measurement points. These rights are quantified in detail in Compact appendices 10, 11 and 12.
- FIIP right recognized as part of Tribal Water Right, eliminating need for a Water Court dispute over competing claims filed by US and FJBC. Exercise of FIIP right is subject to WUA. If the WUA is not ratified, the Montana Legislature's approval of the Compact will not be effective.

- Water right from mainstem of Flathead River ("Flathead System Compact Water") of 229,000 acre feet for future development or lease, including 90,000 acre-feet from Hungry Horse.
- The right to maintain the level of Flathead Lake at a minimum pool elevation of 2883 feet above mean sea level. This right does not allow the Tribes to divert water from or draw the lake level down below level stated, either presently or in the future. This right does not change how Lake levels are managed.
- Water rights for wetlands and high mountain lakes located on Tribal trust lands.
- Water right for Boulder Creek and Hellroaring hydroelectric projects (tribally owned).
- Water rights co-owned with MFWP or USFWS (as applicable) for wetlands on lands owned by MFWP/USFWS. Co-ownership does not convey any land management authority.
- Water rights for tribal religious and cultural uses and other existing tribal uses confirmed.
- Compact does not affect Kerr Dam water rights, which are state law-based water rights whose ownership is subject to the terms of the Kerr Dam FERC license and whose attributes will be as finally decreed by the Montana Water Court in the Adjudication.

CSKT WATER RIGHTS-OFF RESERVATION

- Off-reservation time immemorial instream flow rights on mainstems of Kootenai, Swan and Lower Clark Fork Rivers and Placid Creek. Limitations on enforcement of these rights provided in the Compact. Rights set at levels that protect existing uses and allow for future growth.
- Instream rights on four Kootenai River tributaries that lie wholly within National Forest boundaries.
- Co-ownership of various water rights held by MFWP in Bitterroot, Flathead and Blackfoot River Basins, as listed in Appendix 28 and 29.
- Co-ownership with MFWP of former Milltown Dam water right. Change in purpose of that right from hydro to fisheries made by legislative approval of Compact. Right retains 1904 priority. 10 year deferral of enforcement. Additional protections included for junior water users. MFWP will have this right whether or not it is included in the Compact.
- Beneficial interest in contracts for stored water owned by MFWP in the Bitterroot (from Painted Rocks Reservoir and Lake Como). No changes to reservoir management or existing irrigation uses.

CONTRIBUTION TO CSKT SETTLEMENT

- The Compact commits \$55 million State contribution to the CSKT settlement as allocated below:
 - \$30 million to the FIIP to help defray increased pumping costs and for other needs as part of the implementation of the FIIP Water Use Agreement;
 - \$4 million to cost-share stockwater mitigation to replace FIIP stock water deliveries outside irrigation season;
 - \$4 million for improved water measurement;
 - \$4 million to cost-share on-farm efficiency improvements on lands served by FIIP; and
 - \$13 million to Tribes for enhancement of aquatic and terrestrial habitat (part of compromise over settlement of Tribes' on- and off-reservation instream flow water rights claims).
- Federal funding at a level to be set in the federal ratification bill. Funding level set after tribal-federal negotiations and roughly benchmarked to federal programmatic responsibilities and litigation exposure.

INDIAN WATER RIGHTS COMPACT FUNDING

- Authorizes issuance of \$55 million in General Obligation bonds for the CSKT Compact.
- Authorizes issuance of \$14 million in General Obligation bonds for the Blackfeet Compact to pay the state's costs for water-related infrastructure projects provided for in MCA 85-20-1505;
- Authorizes issuance of \$3 million in General Obligation bonds for the Fort Belknap Compact - Peoples Creek minimum flow account, MCA 85-20-1007.

SUMMARY
UNITARY MANAGEMENT ORDINANCE
CSKT – MONTANA WATER RIGHTS COMPACT

The Compact establishes a Unitary Management Ordinance (Ordinance) and a State-Tribal Water Management Board (WMB) to govern the administration and enforcement of all water rights within the boundaries of the Flathead Reservation, filling the regulatory void that currently exists on the Reservation as a consequence of a series of Montana Supreme Court decisions.

Some important facts about the Ordinance:

- Applies equally to tribal members and non-members.
- Governs issuance of new water rights and authorizations to change existing water rights, and enforcement.
- Largely but not completely mirrors Montana Water Use Act.
- Cannot be amended unless the Tribes and State jointly agree.
- Does not apply (and the WMB does not have jurisdiction) outside the reservation.

The WMB is composed of five voting members, two appointed by the Governor, two by the Tribes, fifth by the four appointed members. A sixth, non-voting member is appointed by the US. WMB members must live on or do business within the Reservation. A Water Engineer, under the supervision of the WMB, will be responsible for the day-to-day implementation of the Ordinance and the administration of water rights on the Reservation.

Acquiring New Water Rights on the Reservation

The Ordinance provides a process for applying for and receiving new Appropriation Rights or Change in Use Authorizations in a manner that largely mirrors the existing State law processes.

The Ordinance provides for streamlined permitting of small domestic and stock uses.

- Three types of Domestic Allowance: Individual, Shared, and Development. All available with basic application form and strict time frames for approval by the Office of the Engineer. No mitigation requirements.
- Individual and Shared Domestic Allowances – up to 35 gpm & 2.4 acre feet per year (afy) and no measurement requirement.
- Development Domestic Allowance – up to 35 gpm & 10 afy and measurement requirement to protect existing users.
- Three types of Stock Water Allowance: Stock Water Well Allowances, Stock Water Pit Allowances, and Stock Water Tank Served by Surface Water Allowances.
- No mitigation or measurement required.
- Well Allowance is up to 35 gpm & 2.4 afy; Pit Allowance is up to a pit capacity of 5 af and appropriation of 10 afy; Surface Water Allowance is up to 10 gpm and 2.4 afy.

The Ordinance provides specific provisions for permitting redundant and substitute wells, geothermal heating or cooling wells, water for road construction & dust abatement, new uses from Flathead System Compact Water, and wetlands and provides for temporary emergency appropriations.

Documenting Existing Water Rights on the Reservation - Registration Process:

- **No registration is required for valid existing State-based water rights presently on record with the MT DNRC** (claims in the Adjudication, permits issued by DNRC, certificates of water right issued by DNRC).
- **No registration required for those small domestic and stock uses** filed with DNRC since 1996 (on DNRC Form 602 or 605) but 'suspended' due to Montana Supreme Court's removal of DNRC's administrative authority to grant water rights on the Reservation. These uses are automatically protected under the Compact and Ordinance.
- **Registration of existing uses of the Tribal Water Right:** Process for people claiming uses of the Tribal Water Right in existence on the Effective Date of the Compact to register those uses with the WMB. Registration is necessary so those uses may be administered and protected.
- **Registration of certain previously unrecorded uses :** 1) People with pre-1973 domestic or stock uses who did not have to and did not file a claim for those uses in the adjudication; and 2) people with post-1973 domestic or stock uses who did not file completion forms (DNRC Form 602 or 605) with the DNRC. Registration is necessary to protect and administer those uses.

Water Right Enforcement

- The Ordinance creates a process for resolution of disputes between or among water users. Disputes that are exclusively among Flathead Indian Irrigation Project (FIIP) water users remain the responsibility of the FIIP to resolve.
- Enforcement is a user-driven, locally controlled process. Complaints may be lodged with the Water Engineer and decisions appealed to the WMB. Appeal of WMB decisions available to court of competent jurisdiction.
- WMB has authority to appoint water commissioners by unanimous vote of all five voting WMB members. Powers and duties of the water commissioner are defined in the Compact and are similar to State statutes governing water commissioners.

**PROPOSED FLATHEAD INDIAN IRRIGATION PROJECT
WATER USE AGREEMENT SUMMARY**

The Flathead Indian Irrigation Project (FIIP) Water Use Agreement addresses the exercise and administration of both the FIIP water rights (but *not* private rights held by irrigators personally) and the Confederated Salish and Kootenai Tribes' (Tribes) instream flow rights for streams supplying the FIIP. This agreement is being negotiated among the Tribes, the Flathead Joint Board of Control (FJBC) and the United States. The Compact Commission is not a party to these negotiations, but the Water Use Agreement is intended to be attached to the Compact as an appendix, and the Compact makes the Water Use Agreement's conditions binding on the Tribes' exercise of its instream flow and FIIP water rights.

Under Montana law, all water rights in the state are going through a general adjudication. The United States, the FJBC, and the Tribes have competing claims to the water delivered and controlled by the FIIP. Consequently, in the absence of a settlement, the water use associated with the FIIP will be contested through the Montana General Stream Adjudication process to determine whose water rights claims are valid, the priority date of all valid claims, and all the other aspects of such claims. This prospect creates much uncertainty and risk for all parties and indefinitely prolongs the adjudication.

Based on rulings by the U.S. Supreme Court and other Federal Courts, the adjudication process may determine that the instream water rights of the CSKT have a time immemorial priority date and the CSKT consumptive water rights a priority date of 1855. The priority dates for CSKTs' instream flows would be senior to any other water rights on the FIIP and the CSKTs' consumptive use rights' priority date would at least be equal to and in many cases senior to non-tribal irrigation rights.

The Water Use Agreement eliminates this conflict by making the FIIP right part of the Tribal Water Right, meaning all FIIP water users benefit from the Tribes' 1855 priority date. In addition, the Water Use Agreement contains specific protections for the irrigation right from the full exercise of the Tribes' senior instream flow rights, as explained in the points below. The Water Use Agreement does not transfer ownership of any private water rights to the Tribes. All water rights claims filed individually in the Adjudication will be as finally decreed by the Montana Water Court and those decreed rights are entitled to benefit from the protections for existing water rights built into the Compact.

Litigation: The FJBC's legal authority to enter into the Water Use Agreement has been challenged in state district court. On February 15, 2013, Judge C.B. McNeil enjoined the FJBC for entering into the Water Use Agreement. The FJBC has appealed that ruling to the Montana Supreme Court. Separately, the Tribes have filed a petition with the Montana Supreme Court to have Judge McNeil's ruling set aside. The Montana Supreme Court has stayed Judge McNeil's ruling and all further proceedings in the case pending its resolution of the Tribes' petition.

- The proposed agreement protects FIIP irrigators by providing water through two main methods: the **Farm Turnout Allowance (FTA)**, and a **Measured Water Use Allowance (MWUA)**:
 - The **FTA** is a volume of water that is available to all FIIP lands – up to a maximum of 1.4 acre-feet per acre. The annual FTA will be set each year based on hydrologic conditions (wet, normal, dry).
 - Separate FTAs will be established for the Jocko, Mission and Camas divisions to reflect local conditions.
 - FTAs are phased in as management improvements and rehabilitation and betterment projects funded by the settlement occur. Status quo allocations remain in place until that time.

- The MWUA allows individual irrigators to use water over and above the FTA if they can show through an efficiency audit overseen by the FIIP Operator that the additional water can be efficiently used.

In addition to the FTA and MWUA, the Water Use Agreement protects irrigation uses by allowing for pumping of up to 65,000 acre-feet of water through existing FIIP pumps. This is considerably in excess of the amount historically pumped. An irrigator would be able to purchase additional water through pumping from the Flathead Pumps or from the Tribes' Flathead System Compact Water.

Irrigators who are served by the FIIP and who have Secretarial Water Rights (which are still junior to the Tribes' instream flow rights) will continue to be served by the Project. These irrigators will benefit from the Water Use Agreement on the same basis as other FIIP users – including access to the FTA and MWUA and other related provisions.

The Compact creates a process for irrigators located within the FIIP influence area who have individually-owned water right claims or permits under state law to be protected by entering into voluntary agreements that allow them to use irrigation water up to their historic use or the FTA, whichever is less, without being 'called' by the Tribes' senior instream flow rights.

Deferrals for on-farm quotas and extra-duty water: The Water Use Agreement contemplates rehabilitation and betterment (R&B) of FIIP infrastructure, as well as operational improvements to make the balance work between irrigation uses and instream flows. There is a deferral period before any of the changes contemplated in the Water Use Agreement (including the FTAs) would go into effect. During this deferral period current FIIP water delivery practices remain in place. Changes made as a result of management improvements will be deferred for up to five years after funding is appropriated. Changes as a result of R&B projects will be deferred for up to seven years after funding is appropriated. Federal funding for the operational improvements and R&B projects require passage of Federal legislation, leaving the status quo in place for several additional years.

Protecting Property Rights: As the Water Use Agreement concerns only the FIIP right and the Tribes' instream flow rights, nothing in the agreement affects any private claim filed by a water user in the Adjudication. Those claims will be as they are finally decreed by the Water Court. In addition, nothing in the proposed agreement:

- authorizes any access to private property by any party to the agreement;
- reduces or enhances the legally enforceable right of individual irrigators under the Project to receive irrigation water. A FIIP water user's right to receive irrigation water delivered by the Project Operator is appurtenant to the land and runs with the land and is fully transferable under applicable law
- alters, diminishes, or enhances applicable operating procedures concerning a FIIP irrigator's ability to transfer or marshal, within a FIIP irrigation system operator's administrative area, irrigation water allocated to that irrigator. However, consistent with current law, no water marketing directly between or among FIIP irrigators is allowed.

Improving FIIP Operations and Facilities: Funding for the improvements would come from the United States and the State of Montana as a result of this settlement. The improvements would be designed to bring the greatest possible benefit to CSKT natural resources, FIIP management, the FIIP land base, and the Reservation economy. Without a settlement, funding for these projects would not be available. The State intends to spend \$42 million directly for the benefit of the FIIP as part of its overall \$55 million contribution to the settlement.



COMMUNITY BANK
Serving Montana Since 1910

February 25, 2013

Mr. Chris Tweeten, Chairman
Montana Reserved Water Right Compact Commission
1625 Eleventh Avenue
PO Box 201601
Helena, MT 59620-1601

Dear Mr. Tweeten:

My name is Gordon Zimmerman and for the past 10 years I have had the pleasure to serve as President of Community Bank, Inc. in Ronan, MT. Our institution has served the Mission Valley since 1910 and has consistently supported the economic activities of the Salish & Kootenai Tribe (Tribe) as well as the non tribal residents for over 100 years.

I write today in support of the Montana Reserved Water Right Compact Commission's (Commission) scheduled February 26, 2013 "Action Item" to approve the "Proposed Water Rights Compact" (Compact).

Since the Commission's formation in 1979 and since its focus on this particular Compact in 2009, untold financial resources have been expended by Federal, State, Tribal and local officials in bringing this Compact to a vote. While this Compact is not exclusively beneficial to any one group, all have agreed that this compromise is preferred to years of continued delays and protracted litigation.

The Mission Valley is slowly emerging from the Great Recession and recent commercial economic development is encouraging. Agricultural trends are positive as well, with the majority of operators seeing improvements in land and product values. The proposed Compact also provides economic benefit through funding of needed repairs and improvements to the existing water delivery channels. Continued delays or further litigation by fringe groups will only serve to jeopardize this economic recovery, replacing clarity and consensus with unknown water rights potentially dictated by parties outside of our community. This point is made clear when reviewing the attached February 19, 2013 letter from the United States Department of the Interior.

63239 US HWY 93 ~ PO BOX B RONAN, MT 59864 TEL: (406) 676-4600 FAX: (406) 676-4625
HARVEST FOODS BRANCH ~ 63802 US HWY 93 RONAN, MT 59864 TEL: (406) 676-0900
RONAN ~ PABLO ~ POLSON ~ COMMUNITY BANK MISSOULA

MEMBER FDIC

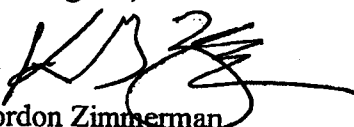
www.communitybanksmontana.com

I wish to thank the Federal, State, and Tribal governments who have invested significant time and resources in bringing this Compact to the Commission for this critical vote. While these negotiations have been lengthy and at times difficult, all parties have put the success of this Compact above personal agendas.

I respectfully request that the Commission vote to approve this Compact for submittal to the 2013 Montana State Legislature. Now is the time for action – now is the time for delivery of a clear Compact negotiated in good faith by all parties.

Thank you for your time and consideration on this matter.

Best Regards,


Gordon Zimmerman
President

cc:

Mr. Joe Durglo, Chairman, Confederated Salish & Kootenai Tribal Council

February 25, 2013

Montana Reserved Water Rights Compact Commission
POB 201601
Helena, MT 59620-1601

Dear Commission,

I would like to take a moment to introduce myself and my wife. We are Paul and Carlisa London, owners and operators of the Polson RV Resort and the Polson KOA campground. We have lived in Polson for 14 years. We purchased the Polson KOA in February of 2000, and in 2008 we began developing the Polson RV Resort. We have both been involved with our local chamber of commerce since 2000, and Paul has been on the board of directors. Paul is a member of Polson's Beautification Committee, Polson's Streetscape Committee and regularly attend the Polson City Council meetings. Paul has also been on the Glacier Country Board of Directors since 2003. We strongly support our local community and region. Our business is dependent upon tourism. We have guests come from all over the world. We also have a gift store that is supported by our guests and the local community.

We support the agreement on compacting. It's time to move forward and create some certainty to our future. With the time and energy invested by both the state and tribe, it would be a major disappointment not to come to an agreement now. We appreciate the time and energy that the committee members have put into this agreement. You have helped bring this situation to a good resolution for everyone and we commend you for that.

Coming together on this compact agreement will be huge for business. It gives us all the opportunity to move forward and promote more businesses coming here, which in turn creates jobs, sells houses and so on.

Thank you for your time and support on this important issue.

Sincerely,

A handwritten signature in cursive script that reads "Paul & Carlisa London". The signature is written in dark ink and is positioned above the printed name and address.

Paul and Carlisa London
Polson RV Resort, LLC
200 Irvine Flats RD
Polson, MT 59860

March 7, 2013

Water Rights Decision Time

Water rights decision time is now. Hopefully the MT State legislature will approve the Compact agreement during this session. I also hope that farmers and ranchers will support the related Water Use Agreement (WUA). I raise hay on a 240 acre farm that is very dependent on irrigation water for survival. I publicly opposed the May 2012 version of the WUA but for a number of reasons I support the renegotiated WUA released in late January of this year.

First, I am confident that the terms of the WUA contract would give my farm, along with others, legally secure access to water under a Tribal water right with an 1855 priority date. I respect the judgment of property owners who want a water right that is appurtenant to their property. But seeking a direct water right in the Montana Water Court would involve legal fees, and more importantly the outcome would be very uncertain. Even if granted a state water right, a property would have a later priority date and thus be subject to a call during water short years.

Second, the January 2013 version of the WUA provides more water for the Project as a whole and includes provisions that give me reasonable assurance that my farm, and also other farms, will continue to receive water deliveries consistent with historical flows. Under the WUA, instream flow increases would be phased in as more water is made available to the Project. If the WUA is rejected I believe the Tribes would seek to achieve their instream flow objectives up front. Irrigators would have to wait for major Project improvements.

Third, rejection of the WUA would result in much higher annual operating and maintenance fees (O&M). Without the net power revenues and the low cost block of power provided for under the WUA, O&M costs would be at least four dollars an acre higher. Without the potential state funding provisions in the WUA, O&M fees will need to be increased to cover any additional pumping costs on the Flathead River.

Fourth, rejection of the WUA also would mean a loss of state and federal funds to support much needed rehabilitation and betterment (R&B) projects. I believe that the Project would need to impose, at a minimum, a ten dollar per acre R&B fee to fund projects necessary to meet environmental requirements. Much higher R&B fees would be needed to implement project improvements necessary to achieve the WUA farm turnout and measured water use allowances.

There are important issues in the WUA that need to be resolved and the sooner the better. Also, the Project faces many uncertainties and challenges in the future, especially with respect to environmental requirements. Thus farmers and ranchers need to pay much closer attention than in the past to the work of the FJBC and the CSKT-FJBC Cooperative Management Entity (CME) that now manages the Project.

I sum, I believe continued negotiation and cooperation between the FJBC and the Tribes is a better way to protect irrigation water for farmers and ranchers than a return to litigation and conflict. It is also the best way to continue to reduce the role of the Federal government on this irrigation project.

Dick Erb
Moiese



MOUNTAIN WATER COMPANY

P.O. Box 4826 - 1345 W. Broadway - Missoula, MT 59806 - Phone (406) 721-5570 - Fax (406) 523-5090 - www.mtnwater.com

January 16, 2013

Joe Durglo, Chairman
Confederated Salish and Kootenai Tribes
PO Box 278
Pablo, MT 59855

Chris Tweeten, Chairman
Montana Reserved Water Rights Compact Commission
2705 Spurgin Road, Bldg. C
Missoula, MT 59804

RE: Proposed Confederated Salish & Kootenai Tribes Water Rights Compact

Dear Compact Parties and Montana Legislature,

This letter expresses Mountain Water Company's support of the proposed Water Rights Compact entered into by the Confederated Salish & Kootenai Tribes, The State of Montana, and United States of America.

Mountain Water Company (Mountain) is the primary public water supplier for the city of Missoula and surrounding area, serving over 23,000 customers with a population of about 60,000. Mountain's supply comprises 70+ water rights with priority dates ranging from 1866 to 1996. Mountain's ability to acquire new water rights in the future will play an integral part in Missoula's ability to grow. Mountain takes water rights in western Montana very seriously.

Mountain supports the proposed Compact for a number of reasons, including:

- The Compact will avoid inevitable and protracted federal litigation over CSKT's water rights.
- Mountain and other water users can participate in the adjudication of any of CSKT's off-reservation water rights through the normal stream adjudication process under the jurisdiction of Montana's Water Court, as opposed to prolonged litigation in the Federal court system.
- The instream flow provisions protect recharge to the Missoula Aquifer, Missoula's only water supply.
- The Compact does not create any "new" water rights in the upper Clark Fork, Bitterroot, or Blackfoot River Basins.
- Hungry Horse Reservoir water will be leasable to support future growth in the Clark Fork watershed.

Mountain understands that all parties made significant concessions, and extends our thanks to the Compact Parties for their creative and diligent efforts in reaching this proposed settlement.

Sincerely,

Ross D. Miller, Esq., PE
Chief Legal Officer
Mountain Water Company

John Kappes
President
Mountain Water Company

Copy: David Harder, U.S. Department of Justice
Duane Mecham, U.S. Department of the Interior
Dick Barrett, Montana Senate



December 17, 2012

**To: Chris Tweeten, Chairman,
Montana Reserved Water Rights Compact Commission**

**CC: Rob McDonald
Confederated Salish and Kootenai Tribes**

The members and board of the Flathead Valley Chapter of Trout Unlimited would like to commend the Montana Reserved Water Rights Compact Commission and the Confederated Salish and Kootenai Tribes for their work in developing a draft agreement to quantify water rights of the Tribes on and off the Flathead Reservation. We fully support ratification of the proposed Compact.

This proposed agreement is long overdue and the work of the Commission on this issue during the last several years is much appreciated. The willingness of the Tribes to relinquish existing off-reservation claims to protect the rights of non-tribal water users is to be commended. This agreement will provide valuable protections to Montana water users and to current water rights holders.

We recognize that CSKT has always been an able steward of Montana's water and this agreement will serve to strengthen and enhance water rights and water laws in our state. We greatly appreciate and support the involvement of CSKT in protecting instream flows in Northwest Montana. We do, however believe that the draft proposal for co-ownership between Montana FWP and the tribes of the former 2,000 CFS Milltown Dam water right can be improved. The amount of water protected for instream flows should be 1,300 CFS instead of 1,200 CFS, with 700 CFS from the Blackfoot and 600 CFS from the Clark Fork. We feel that Tribal involvement in both on, and off-reservation flow protections will be beneficial to our current and future fisheries and will protect and enhance the value of our public investment in these resources.

We also appreciate the efforts of the Tribes to enhance water rights and water use within the Reservation boundaries through the establishment of the Water Management Board to administer on-reservation water rights and through increasing efficiencies within the Flathead Irrigation Project. These actions should serve to solve the legal impasse in place since 1996 and allow for improved water management and fisheries on the Reservation.

This agreement provides more certainty for the rights of all water users and will provide additional needed water within the Flathead Basin to meet future consumptive needs and allow for expected economic development both on and off the Flathead Reservation.

Thank you for this opportunity to comment. Again, Flathead Valley Trout Unlimited wants to thank all those involved in this lengthy and complicated process and we will wholly support ratification of the proposed compact and ordinance.

Sincerely,

Chris Schustrom
President
Flathead Valley Chapter Trout Unlimited

P.O. Box 638 Kalispell, MT 59903

website: www.flatheadtu.org **email:** flatheadtu@gmail.com **ph:** 406-260-1198



January 18, 2013

Chris Tweeten, Chairman
Montana Reserved Water Rights Compact Commission
2705 Spurgin Road, Building C
Missoula, MT 59804
dnrcwrcc@mt.gov

SENT VIA EMAIL

Re: Proposed Compact – Confederated Salish and Kootenai Tribes

Dear Chairman Tweeten:

Thank you for the opportunity to provide comments to the Reserved Water Rights Compact Commission (Commission) on the proposed water rights Compact negotiated among the State of Montana, the United States and the Confederated Salish and Kootenai Tribes (CSKT). The Clark Fork Coalition (Coalition) believes the Compact is a practical settlement that balances the legal obligations of the State of Montana to resolve the water rights reserved by the CSKT with the State's obligation to protect existing water uses and provide for expanded water use and growth for future generations in western Montana. As such, the Coalition supports the Compact, and urges the Commission to approve it and send it to the Legislature for ratification.

The mission of the Coalition is to protect and restore the Clark Fork watershed. We advance our mission in a number of ways, one of which is working closely with landowners in the basin to develop stream restoration projects that restore degraded riparian habitat and that keep streams flowing. In that capacity, we work regularly with irrigators in the Upper Clark Fork basin, and have heard their concerns about one specific aspect of the Compact: how the conversion of the former Milltown hydropower right to instream flow will affect their individual operations. The Coalition also has concerns about how the management of this instream right will play out, since working out the details of making call – and mitigating the impacts of a call – will be quite challenging and potentially expensive.

However, we believe it is important to remember that the state's litigation settlement with ARCO mandated changing the Milltown right to instream flow. Even if the Milltown right was *not* included in the Compact to satisfy the CSKT's off-reservation claims in the Upper Clark Fork, landowners would still be faced with having to meet an instream flow target of up to 2,000 cubic feet per second (cfs). We believe the way the Compact proposes to constrain the use of the Milltown right (decreasing the enforceable flow rate to 500 cfs at Turah) will mitigate most impacts to agricultural water users in the Upper Clark Fork.

The Coalition also appreciates the ten-year deferment on implementing enforcement of the Milltown right. The Coalition believes that the irrigators in the Upper Clark Fork are in the best position to develop a workable plan for meeting the flow target. Our experience working with water rights and irrigators across the basin

tells us that any water management changes will benefit streams and rivers *only if* the changes work for agricultural water users on the ground. In addition, we are hopeful that the millions of ARCO Natural Resource Damage settlement dollars set to be invested over the next decade on instream flow projects in the Upper Clark Fork will also help to mitigate potential impacts to Upper Clark Fork irrigators from enforcing the Milltown instream flow right.

On the whole, we commend the state, federal and tribal negotiating teams for bringing forward an agreement that is a solid compromise. The nature of any compromise is that everyone does not get what they want, but the goal here was to meet everyone's needs to the most practical extent given the competing demands for finite water resources. The Coalition applauds the transparent public process, the detailed hydrologic studies and the lengthy negotiations, all of which have resulted in a settlement that will work for the people and waterways in our basin.

The proposed Compact strikes a practical balance between providing the CSKT the water rights to which the Tribes are entitled and protecting existing water rights that landowners rely upon for their livelihoods. If the Compact is not ratified, Montanans will be left with uncertainty – and likely decades of costly litigation – regarding how to manage and use water in western Montana. In fact, the very real potential for the CSKT to assert and prove water right claims on and off the reservation for 1855 water rights would cause severe disruption and hardship for irrigators, municipalities, and many other water users in the Clark Fork basin.

The proposed Compact is a better alternative. Ratifying this Compact is in the best interest of all Montanans – on and off the Flathead reservation – and will ensure more certainty on using water in western Montana in the future.

Thank you for considering our comments. The Coalition appreciates the effort put forth by the three negotiating teams, and we look forward to finally settling water right claims on the Flathead reservation.

Sincerely,



Karen Knudsen
Executive Director

cc. Confederated Salish and Kootenai Tribes
 United States Department of Interior
 Senator Jon Tester
 Senator Max Baucus
 Congressman Steve Daines
 Governor Steve Bullock



MISSOULA

OFFICE OF THE MAYOR

435 RYMAN MISSOULA, MONTANA 59802-4297 (406) 552-6001

RECEIVED

JAN 29 2013

D.N.R.C.

January 25, 2013

Chris Tweeten, Chairman
Montana Reserved Water Rights Compact Commission
P.O. Box 601201
Helena, Montana 59620-1601

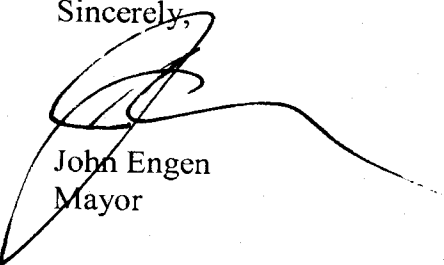
Re: Proposed Water Rights Compact entered into by CSKT, State of Montana, and USA

Mr. Tweeten:

The City of Missoula would like to express its support for the *Proposed Water Rights Compact entered into by the Confederated Salish & Kootenai Tribes, the State of Montana, and United States of America* of November 8, 2012. The agreement defines minimum enforceable stream flows for the Clark Fork River at Turah and the Blackfoot River near Bonner. Stream flows are a critical component influencing in-stream nitrogen and phosphorus concentrations.

The City of Missoula has made a significant investment of over \$18 million in nutrient removal at its wastewater treatment plant; however a portion of the Clark Fork River (just below the confluence with the Blackfoot River) is still needed for dilution to meet in-stream limits. As the City grows, meeting in-stream standards and Total Maximum Daily Loads, both influenced by stream flow, will be increasingly difficult and costly. The compact creates and clearly defines minimum enforceable stream flows for the Clark Fork and Blackfoot Rivers which supports the city in its efforts to meet discharge and in-stream limits with the least impact to the taxpayers.

Sincerely,


John Engen
Mayor



COMMUNITY BANK
Serving Montana Since 1910

February 25, 2013

RECEIVED

Mr. Chris Tweeten, Chairman

FEB 26 2013

Montana Reserved Water Right Compact Commission

CS&KT Administration

1625 Eleventh Avenue

PO Box 201601

Helena, MT 59620-1601

Dear Mr. Tweeten:

My name is Gordon Zimmerman and for the past 10 years I have had the pleasure to serve as President of Community Bank, Inc. in Ronan, MT. Our institution has served the Mission Valley since 1910 and has consistently supported the economic activities of the Salish & Kootenai Tribe (Tribe) as well as the non tribal residents for over 100 years.

I write today in support of the Montana Reserved Water Right Compact Commission's (Commission) scheduled February 26, 2013 "Action Item" to approve the "Proposed Water Rights Compact" (Compact).

Since the Commission's formation in 1979 and since its focus on this particular Compact in 2009, untold financial resources have been expended by Federal, State, Tribal and local officials in bringing this Compact to a vote. While this Compact is not exclusively beneficial to any one group, all have agreed that this compromise is preferred to years of continued delays and protracted litigation.

The Mission Valley is slowly emerging from the Great Recession and recent commercial economic development is encouraging. Agricultural trends are positive as well, with the majority of operators seeing improvements in land and product values. The proposed Compact also provides economic benefit through funding of needed repairs and improvements to the existing water delivery channels. Continued delays or further litigation by fringe groups will only serve to jeopardize this economic recovery, replacing clarity and consensus with unknown water rights potentially dictated by parties outside of our community. This point is made clear when reviewing the attached February 19, 2013 letter from the United States Department of the Interior.

I wish to thank the Federal, State, and Tribal governments who have invested significant time and resources in bringing this Compact to the Commission for this critical vote. While these negotiations have been lengthy and at times difficult, all parties have put the success of this Compact above personal agendas.

I respectfully request that the Commission vote to approve this Compact for submittal to the 2013 Montana State Legislature. Now is the time for action – now is the time for delivery of a clear Compact negotiated in good faith by all parties.

Thank you for your time and consideration on this matter.

Best Regards,



Gordon Zimmerman

President

cc:

✓ Mr. Joe Durglo, Chairman, Confederated Salish & Kootenai Tribal Council



United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Northwest Region
805 S.W. Broadway Street, Suite 600
Portland, Oregon 97205-3346

February 19, 2013

Clayton Matt, Director of Tribal Services
Confederated Salish & Kootenai Tribes of the Flathead Nation
P.O. Box 278
Pablo, Montana 59855-0278

Chris Tweeten, Chairman
Montana Reserved Water Rights Compact Commission
P.O. Box 201601
Helena, Montana 59620-1601

Walt Schock, Chairman
Flathead Joint Board of Control
P.O. Box 639
St. Ignatius, Montana 59865-0639

Jon Metropoulos, Esq.
Metropoulos Law Firm, PLLC
50 South Last Chance Gulch, Suite 4
Helena, Montana 59601-4152

Dear Sirs:

As you know, for the past four years, Federal, State, Tribal and local officials have been actively negotiating to resolve all of the water right claims of the Confederated Salish & Kootenai Tribes of the Flathead Reservation that will be litigated in the Montana general stream adjudication. The negotiators have completed drafts of all of the key settlement documents and are discussing them with their respective decision makers and the public.

I wish to express my appreciation for the effective and respectful manner that each party has exhibited during the course of the negotiations. I recently had the opportunity to brief Department of the Interior officials about this negotiation, and I highlighted the productive engagement of all parties and the high quality of our drafted documents. In those briefings, I was also able to begin the effort within the Department for principals' review of the proposed agreements. As I have previously noted, the Department and this Administration have stated their continued commitment to seek to resolve tribal water right claims through settlement.

I also appreciate the parties' recognition of the need to continue to make progress in these negotiations, and I wish to reinforce this message. From the federal perspective, a failure or significant extension of the negotiations would leave unresolved several critical water resource

needs and conflicts on the Reservation that, with or without settlement, will have to be addressed in the near future.

Specifically, failure or delay of the negotiations should not be equated with a long-term extension of the status quo for irrigation water deliveries on the Reservation. Should negotiations lapse, I anticipate that the federal government will need to address in tandem at least two critical issues in the near-term with the Tribes and others: 1) the adequacy of the current interim instream flows, and 2) the need to implement efficiencies and other measures within the federal Flathead Indian Irrigation Project (FIIP) to conserve water and improve operations.

In the 1980s, the courts conclusively determined that the Tribes, by the terms of the 1855 Hellgate Treaty, are entitled to on-reservation instream flow water rights with a time immemorial priority date. The courts further confirmed that the Tribes' instream flow water rights are senior to the water rights for the FIIP and, in a strict priority situation, have to be met before water deliveries to FIIP irrigators. The federal government, as trustee for the Tribes and the entity ultimately responsible for the federal FIIP, is bound by these court decisions determining the senior priority of the Tribes' instream flow rights. At the time of these court decisions, the Tribes and BIA developed and implemented interim flows for some of the critical streams on the Reservation. Those interim flows have been in place since then, but they were not intended as the full measure of flow needed to meet the Tribes' instream flow water right and were not established for all streams entitled to protected flows.

In recent years, several factors have emerged which indicate that the current interim flows will likely need to be adjusted and expanded in the near future if there is not a settlement. In fact, the level of adequate flows for fishery purposes was extensively discussed in the negotiations. Through these discussions, and to meet the high demand in the negotiations for certainty, the Tribal government and its experts, working with state and federal technical experts, developed a greatly enhanced and scientifically supported body of data and knowledge on what science-based flows for fish and irrigation deliveries for crops should be on the Reservation. Similarly, recent consultations under the Endangered Species Act focused on the need for improvements in flows and in FIIP operations to reduce impacts of flows on fish.

With this recently acquired information indicating that current interim flows on the Flathead Reservation are ripe for reconsideration, the federal government will have to consider all options for ensuring that the Tribes' judicially confirmed rights are protected and that the ESA is complied with. Of course, the current proposed settlement charts a course for implementing a new improved instream flow regimen that I believe provides the needed level of improvements. But without settlement we will have to chart an alternative course for needed improvements (such as considering whether to increase the interim instream flows), which I anticipate could commence as early as this year.

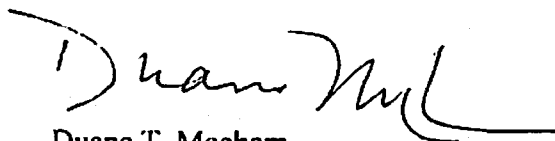
Any actions increasing flows to better meet the Tribes' reserved instream flow water rights and to comply with the ESA would necessarily have an impact on the water supply available for FIIP and non-FIIP irrigation water diversions on the Reservation. To accommodate a corresponding

decrease in the FIIP irrigation water supply, the Bureau of Indian Affairs (BIA), which has ultimate responsibility for FIIP, would need to consider all available options. BIA has indicated to us that, as a first step, BIA would convene the Tribes, the Flathead Joint Board of Control, and the Cooperative Management Entity to work through solutions that adjust Project water supplies and water duties (through, for example, the implementation of individual farm turnout allowances and the elimination of extra-duty deliveries), implement conservation and measurement requirements and address structural improvements to FIIP to prevent entrainment of ESA-listed fish species. Further, unlike the provisions under the proposed settlement, there likely would be no federal or state funding in a non-settlement situation to meet these new requirements, thereby requiring that costs be met by operation and maintenance assessments. Finally, it is important to note that BIA retains ultimate responsibility for and ownership of FIIP; while much less desirable than settlement, we believe that an alternative pathway to improving FIIP operations is currently available and could be implemented in the near-term without waiting for the completion of the Montana general stream adjudication.

In conclusion, I would like to stress that the federal negotiation team remains committed to the negotiations and is not at this time advocating pursuing alternatives to achieving full settlement. Nonetheless, I felt it was important to objectively describe the importance and need for action in the near future and to describe options that are available to address these issues if the effort to settle the Tribes' water right claims fails or is significantly delayed.

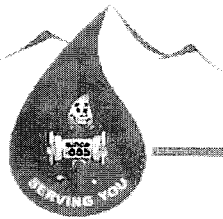
Sincerely,

For the Regional Solicitor

A handwritten signature in dark ink, appearing to read "Duane T. Mecham", with a long horizontal flourish extending to the right.

Duane T. Mecham
Attorney

cc:
Fain Gildea, Dep Dir, US DOI Secretary's
Indian Water Rights Office



MOUNTAIN WATER COMPANY

P.O. Box 4826 - 1345 W. Broadway - Missoula, MT 59806 - Phone (406) 721-5570 - Fax (406) 523-5090 - www.mtnwater.com

January 16, 2013

Joe Durglo, Chairman
Confederated Salish and Kootenai Tribes
PO Box 278
Pablo, MT 59855

Chris Tweeten, Chairman
Montana Reserved Water Rights Compact Commission
2705 Spurgin Road, Bldg. C
Missoula, MT 59804

RE: Proposed Confederated Salish & Kootenai Tribes Water Rights Compact

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Mountain supports the proposed Compact for a number of reasons, including:

- The Compact will avoid inevitable and protracted federal litigation over CSKT's water rights.
- Mountain and other water users can participate in the adjudication of any of CSKT's off-reservation water rights through the normal stream adjudication process under the jurisdiction of Montana's Water Court, as opposed to prolonged litigation in the Federal court system.
- The instream flow provisions protect recharge to the Missoula Aquifer, Missoula's only water supply.
- The Compact does not create any "new" water rights in the upper Clark Fork, Bitterroot, or Blackfoot River Basins.
- Hungry Horse Reservoir water will be leasable to support future growth in the Clark Fork watershed.

Mountain understands that all parties made significant concessions, and extends our thanks to the Compact Parties for their creative and diligent efforts in reaching this proposed settlement.

Sincerely,

Ross D. Miller, Esq., PE
Chief Legal Officer
Mountain Water Company

John Kappes
President
Mountain Water Company

Copy: David Harder, U.S. Department of Justice
Duane Mecham, U.S. Department of the Interior
Dick Barrett, Montana Senate

March 7, 2013

Water Rights Decision Time

Water rights decision time is now. Hopefully the MT State legislature will approve the Compact agreement during this session. I also hope that farmers and ranchers will support the related Water Use Agreement (WUA). I raise hay on a 240 acre farm that is very dependent on irrigation water for survival. I publicly opposed the May 2012 version of the WUA but for a number of reasons I support the renegotiated WUA released in late January of this year.

First, I am confident that the terms of the WUA contract would give my farm, along with others, legally secure access to water under a Tribal water right with an 1855 priority date. I respect the judgment of property owners who want a water right that is appurtenant to their property. But seeking a direct water right in the Montana Water Court would involve legal fees, and more importantly the outcome would be very uncertain. Even if granted a state water right, a property would have a later priority date and thus be subject to a call during water short years.

Second, the January 2013 version of the WUA provides more water for the Project as a whole and includes provisions that give me reasonable assurance that my farm, and also other farms, will continue to receive water deliveries consistent with historical flows. Under the WUA, instream flow increases would be phased in as more water is made available to the Project. If the WUA is rejected I believe the Tribes would seek to achieve their instream flow objectives up front. Irrigators would have to wait for major Project improvements.

Third, rejection of the WUA would result in much higher annual operating and maintenance fees (O&M). Without the net power revenues and the low cost block of power provided for under the WUA, O&M costs would be at least four dollars an acre higher. Without the potential state funding provisions in the WUA, O&M fees will need to be increased to cover any additional pumping costs on the Flathead River.

Fourth, rejection of the WUA also would mean a loss of state and federal funds to support much needed rehabilitation and betterment (R&B) projects. I believe that the Project would need to impose, at a minimum, a ten dollar per acre R&B fee to fund projects necessary to meet environmental requirements. Much higher R&B fees would be needed to implement project improvements necessary to achieve the WUA farm turnout and measured water use allowances.

There are important issues in the WUA that need to be resolved and the sooner the better. Also, the Project faces many uncertainties and challenges in the future, especially with respect to environmental requirements. Thus farmers and ranchers need to pay much closer attention than in the past to the work of the FJBC and the CSKT-FJBC Cooperative Management Entity (CME) that now manages the Project.

I sum, I believe continued negotiation and cooperation between the FJBC and the Tribes is a better way to protect irrigation water for farmers and ranchers than a return to litigation and conflict. It is also the best way to continue to reduce the role of the Federal government on this irrigation project.

Dick Erb
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